

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-401-E - ORDER NO. 2003-116
MARCH 5, 2003

IN RE: Ms. Karen Million,)	ORDER DENYING
)	MOTION TO DISMISS
Complainant,)	
)	
vs.)	
)	
Duke Power,)	
)	
Respondent.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Motion to Dismiss filed in this matter by Duke Power (Duke Power or the Company), the Respondent in this Complaint proceeding brought by Ms. Karen Million. Ms. Million filed two responses to the Motion. Because of the reasoning as outlined below, we deny the Motion.

Duke Power states in its Motion that Ms. Million is seeking a finding of liability in her Complaint which would allow her to recover monetary damages from Duke. Duke asserts that Ms. Million's Complaint is simply a tort claim, and that it is axiomatic that the Commission cannot grant monetary damages. Further, the Company asserts that the Commission cannot give advisory opinions. Accordingly, Duke alleges that under Rule 12(b)(1) of the South Carolina Rules of Civil Procedure, Ms. Million's Complaint should be dismissed without prejudice so that she may re-file it in a court of competent

jurisdiction, since the Commission lacks subject matter jurisdiction to entertain the Complaint.

In her first response to the Motion, Ms. Million states that her Complaint was presented in the correct forum, since she is seeking a determination that Duke failed to supply adequate, efficient and reasonable service and is further seeking penalties accordingly, pursuant to various provisions of the South Carolina Code on Utilities.

In Mrs. Million's Additional Response to Duke's Motion to Dismiss, Mrs. Million states again that her Complaint is clearly concerning adequate, efficient, and reasonable service, and that she alleges that Duke Power failed to provide such service.

The facts of the Complaint allege that Duke provided inadequate service when its electricity "arced," and caused a power surge that went through the Million's home, damaging Mrs. Million's TV and computers, plus certain computer programs.

Duke alleges in its Motion that this Commission lacks subject matter jurisdiction to entertain Mrs. Million's Complaint. Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. *McLendon v. S.C. Dept. of Highways*, 313 S.C. 525, 443 S.E. 2d 539 (1994). Subject matter jurisdiction is met if the case is brought in the court which has the authority and power to determine the type of action at issue. *Washington v. Whitaker*, 317 S.C. 108, 451 S.E. 2d 894 (1994). (Even though this Commission is not a Court, it acts as a deliberative body in certain areas, and therefore would be equivalent to a Court for purposes of the question of subject matter jurisdiction.) Thus, the question in this case becomes one of characterization of the action involved. If we characterize the action as a tort claim, as Duke does, then this Commission does lack subject matter jurisdiction.

However, if we characterize this matter as a claim that Duke provided inadequate service and a claim for penalties because of that inadequate service, then we clearly have subject matter jurisdiction over this case.

Wherein we understand Duke's characterization of this matter as a tort action, we would note that Ms. Million characterizes it as a question of adequate service, as seen in her responses to Duke's Motion to Dismiss. At this point, we agree with Ms. Million's characterization of the matter. She has alleged inadequate service, which is clearly under our jurisdiction as per S.C. Code Ann. Section 58-27-1510 and has further requested penalties pursuant to S.C. Code Ann. Section 58-27-2410 (1976), et seq. We therefore hold that we have subject matter jurisdiction of the questions raised by Mrs. Million, although we note that subject matter jurisdiction may be raised at any time. *See Nix v. Columbia Staffing, Inc.*, 322 S.C. 277, 471 S.E. 2d 718 (Ct. App., 1996).

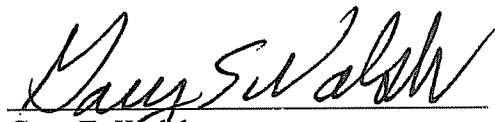
Accordingly, the Motion to Dismiss is denied. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn
Chairman

ATTEST:



Gary E. Walsh
Executive Director

(SEAL)